STATE OF MICHIGAN

COURT OF APPEALS

EVERETT SCHRAM LIVING TRUST by LAWRENCE E. SCHRAM, Trustee, and LAWRENCE E. SCHRAM, Individually,[1]	UNPUBLISHED October 15, 2013
Plaintiffs-Appellants,	
v	No. 312500 Alcona Circuit Court
JULIE T. SMITH, DIANE L. TUDOR, CRAIG JOHNSTON, and NICOLE JOHNSTON,	LC No. 11-001722-CH
Defendants-Appellees.	

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

In this action to enforce an agreement for the sale of real property, plaintiff, Lawrence E. Schram, appeals as of right the trial court's order dismissing the action on the merits. The trial court determined the agreement was not a binding contract because it did not include consideration. Because we find no merit to plaintiff's contention that the agreement between the parties was a binding contract, we affirm.

The property at issue was once owned by Everett Schram. He divided the land into three parcels and deeded one parcel to each of his children, plaintiff, defendant Julie T. Smith, and defendant Diane L. Tudor. After Everett's death, plaintiff, Smith, and Tudor discovered that the land deeded to each of them was inconsistent with their expectations. After discussions, all three signed an agreement (Agreement) to redistribute the property in November 2010. The Agreement, in its entirety, states:

> I Larry Schram give a gift of money to my sister Julie Smith to move her west property line back to the east.Adjacent [sic] to Yearmans [sic] east property line

[1] The complaint in this matter was originally filed by Lawrence individually and as a trustee of the Everett Schram Living Trust, but the Trust was removed as a plaintiff after one count was summarily dismissed.

> out to Trask Lake Rd. Sister Diane Tudor is in agreement to have her property run north and south 770 feet wide on Trask Lake Rd.

Generally, the agreement involved a portion of Smith's property becoming plaintiff's. However, Smith instead sold almost all of her property through a land contract to defendants Craig and Nicole Johnston in March 2011. Plaintiff filed the complaint in the instant case, requesting specific performance of the Agreement and alleging that his interest in the property was superior to the interest of the Johnstons. Following a bench trial where all parties testified, the trial court found the Agreement was not enforceable because it did not include consideration. The trial court found there was no cause of action and dismissed the action on the merits. Plaintiff now appeals.

On appeal, plaintiff maintains that the trial court erred in finding that the Agreement was unenforceable and argues that although the consideration was not included in the Agreement, the testimony supported that the purchase price was $1,000 per acre.

This issue is preserved for appellate review. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). "The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). The trial court's factual findings are reviewed for clear error, and there is clear error only if we are "left with the definite and firm conviction that a mistake has been made." *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008) (citation omitted).

On appeal, the parties argue the enforceability of the Agreement pursuant to both contract law and the statute of frauds. Although the form of a contract for the sale of land is regulated by the statute of frauds, the substance of a contract for the sale of land is subject to the requirements of general contract law that "there must be a meeting of the minds regarding the essential particulars of the transaction." *Zurcher v Herveat*, 238 Mich App 267, 276-279; 605 NW2d 329 (1999) (quotation marks and citation omitted). The "essential provisions" to be identified and included in a contract for the sale of land are the property, the parties, and the consideration. *Id.* at 290-291. Regarding consideration, to be enforceable the contract must include either the price to be paid or a basis to determine the price. *Id.* at 282.

In the Agreement at issue in the instant case, there is no question that neither the price nor a basis to determine the price is provided. The Agreement refers only to a "gift of money." Because the price or a method to determine the price is not included in the Agreement, the Agreement is not enforceable. *Id.* Thus, the trial court properly concluded that the Agreement was not a binding contract for the sale of the land. *Kloian*, 273 Mich App at 452.

To the extent that plaintiff argues the missing element of price can be determined by other legal evidence, we find that argument unavailing. The testimony from the witnesses indicated there was no agreement as to price. Although plaintiff testified he and Smith agreed he would pay $1,000 per acre for the property, Smith testified that they never reached an agreement as to price, she never agreed to $1,000 per acre, and she was asking for $1,500 per acre. Tudor thought Smith and plaintiff agreed to redistribute the land, but was not certain if a price was agreed upon. The trial court found there was conflicting testimony regarding price, and the trial court did not clearly err in making this factual finding. *Jonkers*, 278 Mich App at 265.

Because the Agreement is not an enforceable binding contract, it is unnecessary to address the remaining issues concerning the statute of frauds, specific performance, and whether plaintiff's interest was superior to the interest of the Johnstons.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra